

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**KING SOOPERS, INC.**

**Employer**

**and**

**Case 27-RC-215705**

**UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION, LOCAL 7**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner, United Food and Commercial Workers Union, Local No. 7, seeks an *Armour-Globe*<sup>1</sup> self-determination election for all delicatessen (deli) employees employed by King Soopers, Inc. (Employer) at Store No. 89 to vote whether they desire to be included in a recognized multi-store meat unit at Store Nos. 86, 89 and 118, which are all located in Broomfield, Colorado.<sup>2</sup> Petitioner is not seeking to include the unrepresented deli employees in Store No. 118 in this unit, or those in Store No. 86, which it already represents in a stand-alone retail unit. The Petitioner does not want to proceed to an election in a different voting group than the petitioned-for deli employees at Store No. 89.

The Employer contends that the petition should be dismissed because the petitioned-for deli department does not share a sufficient community of interest with the multi-store meat unit to support inclusion in that unit. Rather, citing *PCC Structuralts, Inc.*, 365 NLRB No. 160 (2017), the Employer contends that the deli employees at least share a community of interest with all other retail grocery employees at Store No. 89, in contrast with the meat department employees.<sup>3</sup>

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<sup>1</sup> *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

<sup>2</sup> More specifically, the Petitioner has petitioned for the following job classifications in the deli department: all deli clerks (including head clerks), store chefs, cheese clerks, head cheese clerks, deli assistant managers, and deli managers. The parties stipulated on the record that the positions of head clerk, cheese head clerk, and deli manager are not statutory supervisors under the National Labor Relations Act (the Act).

<sup>3</sup> The Employer primarily argues that the petitioned-for deli employees at Store No. 89 should be included in a unit of employees in Store Nos. 13, 129 and 135, located in the cities of Louisville, Erie, and Lafayette, Colorado, respectively. Inasmuch as the Petitioner will not proceed to an election including employees other than the deli employees in Store No. 89, seeking only an *Armour-Globe* election to add deli employees to its existing Broomfield meat unit, litigation of whether the deli employees must be included with the retail employees of their own store and Store Nos. 13, 129 and 135 was not necessary. Further, the record reveals that deli employees in Store No. 13 (Louisville) are already represented in a bargaining unit along with meat employees as part of the multi-store Boulder area unit. Accordingly, the Employer's proposed unit, which would ostensibly be based on its geographic area structure, would only include the deli employees from three of the four stores with the retail employees in all four stores.

The Employer asserts that the deli department would constitute an arbitrary and irrational grouping of employees, is contrary to a long bargaining history, and reflects only the Petitioner's extent of organizing. Finally, although the Employer agreed that the deli is an identifiable grouping by department, it contends that the petitioned-for employees are an arbitrary segment of the unrepresented employees.

Petitioner contends that *PCC Structural*s, *supra*, like *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), which it overruled, does not apply to a petition for a self-determination election. Rather, it asserts that *Warner-Lambert*, 298 NLRB 993, 995 (1990) is the appropriate framework. Petitioner contends that the deli department employees are a distinct, identifiable segment of the Employer's operations and that it has a sufficient community of interest with the Broomfield meat department employees to be included in such a unit. Petitioner asserts that the bargaining history in the Broomfield unit is unique and points to its overall bargaining history with this Employer, where it is recognized as the bargaining representative of numerous units of comprised of meat, deli, and seafood employees.

A hearing officer of the Board held a hearing in this matter and the parties subsequently filed briefs with me.<sup>4</sup> Based on the record, the parties' briefs, and relevant Board law, I find that the petitioned-for employees have a requisite community of interest with the meat unit and are a distinct, identifiable segment of the work force so as to constitute an appropriate voting group for the reasons that follow.

### **BOARD LAW**

"A self-determination election is the proper method by which a union may add unrepresented employees to the contractual unit." *Warner-Lambert Co.*, *supra*. Before such election is directed, "it is necessary to determine the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Id.* The petitioned-for employees need not constitute a separate appropriate unit in order to be added to an existing unit. *Warner-Lambert Co.*, *Id.*; *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). Further, a self-determination election may be appropriate regardless of whether the petitioned-for employees may be found to be a separate appropriate unit. *Great Lakes Pipe Line Co.*, 92 NLRB 583, 584 (1950).

The primary consideration in determining an appropriate unit is whether the employees share a community of interest with the represented employees. When making that determination, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees;

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<sup>4</sup> At the hearing, the parties filed a joint motion to the Regional Director seeking to amend the petition and other formal documents to correctly reflect the parties' names in conformity with their joint stipulation. (Bd. Exh. 2.) I have granted the joint motion.

interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

To determine whether the voting group is an identifiable, distinct segment, the Board considers factors similar to the community of interest inquiry, including whether employees have separate supervision, geographic separation of work areas, and lack of integration with other employees in performing ordinary job duties. See *Ore-Ida Foods, Inc.*, 313 NLRB 1016 (1994); *Birdsall, Inc.*, 268 NLRB 186, 190 n.12 (1983), citing *A. Harris & Co.*, 116 NLRB 1628, 1632 (1956).

### **THE EMPLOYER'S OPERATION**

The Employer operates numerous retail grocery stores throughout the states of Colorado, in addition to some stores in the states of New Mexico, Utah, and Wyoming. The Employer's corporate office is located in Denver, Colorado where it maintains a labor relations department. The labor relations department advises stores on a variety of employment and labor matters, such as discipline, terminations, contract policy and procedure, handling and processing of grievances, and seniority systems. The labor relations department oversees seniority systems for the purposes of promotions, transfers, layoffs, recall, and bumping rights in coordination with store managers and their respective district human resources coordinators.

The Employer organizes its stores into eight districts. In each district, the Employer employs a district manager, an operations coordinator, a merchandising coordinator, and a district human resources coordinator. There are anywhere between 16-22 stores in each district. The three Broomfield stores where the unit of meat department employees involved in this matter work (Store Nos. 86, 89, and 118) are all within District 3.

Sometime in 2017, a new structure for the districts was implemented. In addition to the operations coordinator, merchandising coordinator, and a district human resources coordinator on the district level, such personnel were now present on the store level based on volume of sales. The record does not disclose if those positions are filled in the stores discussed in this decision.

The Employer further groups its employees and stores into "bargaining units" and "geographical areas." The term "bargaining unit" in this context refers to a grouping of stores where at least some of the employees are already represented by the Petitioner or another labor organization.<sup>5</sup> The term "geographical area" is generally used to describe a grouping of the unrepresented employees at a number of stores. The unrepresented employees in Store No. 89 are considered by the Employer to be part of the Louisville, Colorado geographical area, which also includes Store Nos. 13 (Louisville), 129 (Erie), and 135 (Lafayette).<sup>6</sup>

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<sup>5</sup> The record establishes that the United Steel Workers represents pharmacists at some of the Employer's Colorado stores.

<sup>6</sup> The record does not reflect which, if any, administrative grouping Store No. 118 in Broomfield belongs to.

Each store has a store manager and at least two assistant store managers. Store management works with the district manager and district personnel in which the store resides. Each store is organized by departments, which are led by department heads or assistant department heads who, in turn, report to the store managers and assistant store managers. The parties agree that the store managers and assistant store managers are supervisors within the meaning of Section 2(11) of the Act.

## **BARGAINING HISTORY**

The Petitioner and the Employer have an extensive collective-bargaining history. Presently, the Petitioner represents workforces at 101 of the Employer's stores in the states of Colorado and Wyoming. Such bargaining units have various configurations and are referred to by the metropolitan areas where the stores are located.<sup>7</sup> In Colorado, Petitioner represents separate meat bargaining units in Denver, Colorado Springs, Pueblo, Parker, Fort Collins, Loveland, Greeley, Longmont, Boulder, and Broomfield. The unit composition is not the same in such units. For instance, the meat bargaining units in Boulder, Colorado Springs, Denver, Fort Collins, Longmont, Parker, and Pueblo expressly *include* the deli employees in their bargaining units. Conversely, the meat bargaining units in Broomfield, Greeley, and Loveland expressly *exclude* the deli employees from their bargaining units. Thus, the stores in the bargaining units in Broomfield, Greeley, and Loveland, consisting of 8 out of 101 stores with meat bargaining units, are the only stores where deli employees are not included in the meat bargaining units.

At issue in this proceeding is the three-store bargaining unit of meat department employees in Broomfield - Store Nos. 86, 89, and 118. Presently, there are about 24 unit employees in this contractual meat unit that includes all meat cutters, apprentices, wrappers, butcher block sales persons, and clean-up personnel. This representation is embodied in the Broomfield meat collective-bargaining agreement that is effective by its terms from September 13, 2015 through January 12, 2019.<sup>8</sup> The Petitioner has represented this bargaining unit since the unit was employed at just a single location - Store No. 86 (formerly known as Store No. 8). Pursuant to the agreement's additional-stores and staffing contract provisions,<sup>9</sup> the parties agreed to accrete the meat employees employed at any newly opened store in the Broomfield area. Accordingly, when Store Nos. 89 and 118 opened in subsequent years, the Employer recognized the Petitioner as the exclusive-bargaining representative of the meat department employees employed at those stores under the Broomfield meat contract.

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<sup>7</sup> The bargaining unit boundaries are not strictly tied to the cities where the stores are located. For example, the meat and deli employees in Store No. 13 in Louisville are part of the "Boulder" bargaining unit.

<sup>8</sup> The parties' collective-bargaining agreement does not explicitly identify "seafood employees" in the description of the meat bargaining unit. Nevertheless, it is understood that the job classification of "butcher block sales persons" as it appears in the agreement encompasses the seafood employees.

<sup>9</sup> Section 1, Article 1 ("Recognition and Exclusions") of the Broomfield meat contract reads, in pertinent part: "Within the geographical jurisdiction of this Agreement, any new stores opened by the Employer shall be accreted and shall be covered by the terms of this Agreement." See also Article 34 ("New Store Opening") of the Broomfield Meat Contract.

The Petitioner has represented a Broomfield bargaining unit combining deli and retail employees at just a single location, Store No. 86 (formerly known as Store No. 8) at all times that it represented the meat unit at that store. Unlike the Broomfield meat unit, the subsequent opening of Store Nos. 89 and 118 did not result in accretions to the retail/deli unit. The most recent contract covering the retail and deli unit for Store No. 86 is effective from September 13, 2015 through January 12, 2019.

With the exception of the meat department employees, all of the remaining employees in Store No. 118, are unrepresented.

## **FACTUAL SUMMARY**

### ***Organization of the Facility***

Store No. 89 has approximately 130 employees employed in the following departments: meat, bakery, front end, customer service, CAO, deli, produce, floral, pharmacy, grocery, general merchandise, seafood, fuel center, and store office.<sup>10</sup> There are approximately six meat department employees at this store. The remaining employees at Store No. 89 are unrepresented with the exception of at least one pharmacist. There are about 12 deli employees, including the deli manager.

The parties agreed that the store manager and assistant manager are supervisors. There are managers for each department and while the parties agree that the department managers are in charge of running their departments, they also agree that they are not statutory supervisors.

The deli department is located on the store perimeter, along the north wall (to the left) of the main doors. All of the deli department employees work within that area and, as noted below, have minimal interchange with other employees outside of their department. Next to the deli is the meat department counter where all of the meat department employees work. On the other side of the meat department, across an aisle, is the bakery department.

### ***The Nature of Employee Skills, Training and Job Functions***

The meat department at Store No. 89 is staffed by the meat manager, four head clerk assistants, and one clerk.<sup>11</sup> While the store is open from 6 a.m. to midnight, the meat department's hours of operation are from 6 a.m. - 10 p.m.<sup>12</sup> The meat department employees'

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<sup>10</sup> Board Exhibit 3(f). There was limited record discussion of whether there is a Starbucks coffee shop in this Broomfield location, but a review of the classifications listed for Store No. 89 does not reveal that any coffee employees are employed at this store.

<sup>11</sup> Store No. 89's seafood department head was not listed on Board Exhibit 3(c) as being part of the Broomfield meat unit, although there was limited testimony that seafood employees are covered under the Broomfield meat contract.

<sup>12</sup> Although the meat department closes at 10 p.m., there was some testimony that the meat department must remove products from their display cases by 9 p.m.

main function is to safely trim, display, and sell raw meat, and also to display and handle pre-packed fresh and frozen meat products to customers. In doing so, meat employees interact with customers; load, transport, stock, rotate and monitor dated products; break down incoming loads; stock products in the cold display cases, maintain the conditions of said cases; remove out of code product; communicate via telephone; practice safe food handling procedures; weigh, label and price products for sale; prepare products such as bacon for sampling; and maintain sanitary conditions at all times, among other duties. The existing meat unit has tools that are unique to its department such as band and power saws used to cut meat, but the record does not indicate the purpose and frequency of usage. In that regard, while there is a grinder, there was testimony it is no longer used. Meat department employees use filet knives to trim fat; a meat tenderizer; ice machine; and a meat slicer. The meat department employees use safety gloves when cutting/slicing/trimming meat. The seafood department head works within the meat department and uses ice to display seafood items in the seafood case. The meat department also uses a portable oven or microwave to cook samples. The meat department has its own cooler and freezer area behind the counter where the department stores products. The record reflects that the Employer has recently installed automated, electronic temperature readings to monitor the store's cold cases, coolers, and freezers. Consequently, the deli, meat department, and grocery clerks electronically monitor their respective coolers, freezers, and the department's cold cases. While meat department employees wait on customers at a counter, it does not have a cash register.

The deli department is staffed by one manager, one store chef, two head clerk assistants, and seven clerks. Like the meat department, the deli department's hours of operation are from 6 a.m. - 10 p.m. The employees' function is to handle, prepare, cook, and sell ready-to-eat food to customers. In doing so, the employees interact with customers; load, transport and stock, and rotate prepared deli items on their "hot bar" and cold cases; maintain the conditions of their cases; monitor the code dates; break down loads; practice safe food handling procedures; communicate via the telephone; weigh, label and price items for sale; maintain sanitary conditions, including cleaning their tools and work areas every night. Deli employees are required to maintain and record temperature logs of their heated cases and cooked foods. To do so, deli employees use a probe thermometer and paper and pencil to keep temperature recordings. The deli has a cash register and employees will sometimes ring up sales of products from other departments.

The deli employees use numerous tools and equipment including three meat slicers to slice cooked meat to the customer's specification; two fryers to prepare fried chicken out of pre-packaged frozen chicken; at least three ovens to cook pre-packed frozen food; a chill blaster to cool down heated/fried food; and a hot bar where foods like the fried chicken are kept hot. The deli employees use safety gloves when slicing meats.<sup>13</sup> The deli employees prepare sandwich or party trays to order. The deli also has its own walk-in cooler behind the deli counter, away from customer's view. The deli department also has its own freezer.

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<sup>13</sup> Employer Exhibit 8 lists a rotisserie machine as equipment used in the deli department. There was no witness testimony describing its use at this particular location.

The bakery is staffed by one manager, one decorator, and three clerks. The bakery department employees assist in the retail finishing and/or sale of bakery products. In that regard, they ice or glaze products, including cakes. In doing so, the bakery department must also provide customer service, interact with customers, and practice safe food-handling procedures. Similarly, bakery employees stock incoming products in the department, including placing items on tables; rotate product, monitor code dates and remove out of code product; operate a phone to communicate with customers and other departments; prepare samples; stock supplies and merchandise to proper location; and maintain sanitary conditions, including washing dishes and utensils as needed. While employees in the bakery interact with customers by taking orders from customers for cakes and other special orders, they do not operate a cash register.

The bakery department operates or uses tools and equipment such as display cases, a bread slicer, an oven to prepare its samples and to bake bread, a label machine, and its own freezer. The bakery also handles heavy icing buckets and uses an icing table. The record reveals that this bakery no longer has a fryer as the doughnuts are simply finished in the department.

All other retail department clerks (specifically, front-end clerks, general merchandise clerks, floral clerks, grocery clerks, produce clerks) have some similar job functions as bakery, deli, and meat employees. The record has limited testimony with respect to the job functions of these retail clerks. Based on the job descriptions provided and the limited testimony, these retail clerks also provide customer service; practice safe food handling procedures; communicate directly with customers; communicate verbally over the phone or the public address system; stock merchandise or products in their respective departments; price and label products; load and transport products to their proper locations; clean and maintain sanitary working conditions and work areas; stock and rotate products; prepare products for sampling; and break down loads.

All departments also have to clean their work areas at the end of the day using their own cleaning supplies found in their work areas.

While meat and deli employees use knives, bakery, floral, produce and other retail employees use box cutters or small knives to trim. All departments use "U-boats" or wheeled carts to haul and transport their loads to stock their areas. In all departments that handle any tools, knives, scissors, or compactors, employees must at least be 18 years-old. The record reflects that bakery, meat, deli, and produce departments store products in either their department cooler or freezer or in the general store cooler.

The record reflects that all store employees are required to wear uniforms. While the bakery, meat, and deli employees must wear hair restraints and/or caps, the front-end clerks generally do not. The meat department manager usually wears a black vest, and other meat department employees usually wear white smocks with the option to wear aprons. The deli and all other retail employees wear employer-issued blue smocks or shirts and/or an optional green apron. The record further shows that employees who handle fresh food products, including the meat, deli, and produce employees, must wear gloves for sanitary reasons. The front-end checkers do not have to wear gloves.

As to training, all employees receive the same customer service and general safety training when newly hired, which covers customer service, general safety, and associate safety. The deli and meat employees receive additional computer based training relating to safe food-handling procedures, which includes a test after each module. Although the time it takes to complete the training is about the same for deli and meat, the deli training is somewhat different as there is training related to the operation of the slicers. The record does not reflect whether the bakery employees are required to undergo specific-departmental training in addition to the general, computer-based training that all new-hires go through.

Both the deli and meat department employees engage in on-the-job training (e.g., shadowing) to learn how to operate equipment in their departments. One meat department clerk testified that it took about a month of on-the-job training to learn the job. A deli department witness testified that she learned to slice meat and fry chicken by shadowing and then having her manager watch her perform these tasks. Deli employees are not cross-trained with other departments.

As to the qualifications required for the positions in the meat and deli department, only the meat manager and assistant manager job descriptions list any vocational qualifications, which include retail grocery experience (manager only) and apprentice and meat cutter experience. The record does not reveal, however, whether any meat department employees had *formal* apprenticeship training. The meat department clerks do not have such requirements in their job descriptions, although the skills needed to perform the job include some additional skills than listed for deli and other clerks, such as the ability to disassemble/reassemble equipment, knowledge of meat cutting, processing and preparation; and ability to work with limited supervision.

According to the job descriptions provided, the deli clerks are required to have basic food handling experience. The deli head clerks are required to have prior retail and deli department experience and must have good organizational skills, use a keyboard and 10-key pad, have management and leadership skills, and be knowledgeable about the products in the department.

As for the bakery department, the job description indicates that it is preferable for the cake decorator to have some cake decorating classes or experience in order to ice and decorate. The bakery clerks are not required to have prior experience or vocational training. In the floral department, the plant/floral design clerk must have a design certificate and/or two years of experience. The floral department employees must be skilled in selling techniques and know FTD procedures.

All position descriptions in the record require that employees have achieved high school graduation or equivalency.



***Degree of Functional Integration and Contact***

The deli and meat departments are immediately adjacent to one another. Based on the store diagram provided by the Employer,<sup>14</sup> there is only a small break between the meat and deli departments. The meat department is the only department that is adjacent to the deli as there is a seating area on the other side of the deli. The meat department extends towards the bakery department, but they are separated by a wall. All three departments are connected by the sales floor in addition to a hallway located in the back of the store.

Since there is no wall between the deli and meat departments, the employees can see each other while working. The deli work area - specifically the work tables, slicers, ovens and fryers - is between the deli counter and the department's supply room and cooler. Immediately behind this work area is the department's supply room and cooler. These rooms, unlike the work tables, are not visible to customers. Deli employees enter the cooler from the supply room. The record shows that the meat department has access to the deli cooler from the meat cutting room. The meat cutting area is located in back of the meat department's counter. Immediately to the right of the meat cutting area is the meat cooler.

The record shows that the meat and deli employees have some interaction with respect to the sorting of the nightly load from the warehouse. The meat department, produce department, dairy clerk and closing foreman first unload pallets from the truck. Thereafter, each sorts the load according to their respective departments. The meat department and the deli department loads arrive together in the same pallet. The meat department transports the pallet to the meat cooler, which is located in the meat department. From there, a deli employee and a meat department employee separate the meat load from the deli load. Once separated, the deli employee, usually the assistant deli (night) manager, transports the deli load using a cart from the meat cooler to the deli cooler. The next morning, the deli manager and other opening-shift employees break down the load and stock and condition the deli department cases. There is limited testimony that, in some cases, a meat department employee would separate the deli load from the meat department load without the help of a deli department employee. In those cases, the meat department thereafter either delivered the load to the assistant deli manager at the deli department or left the deli load in the meat cooler to be later retrieved by a deli department.

The record does not otherwise show that employees from different departments, including the deli and meat departments, frequently enter each other's areas to perform work functions. In that regard, each department orders and stocks its own area with product.

There is limited evidence of the sharing of supplies between the meat and deli departments. The deli has borrowed sharp knives from the meat department for certain tasks, although it now has its own selection of knives. The two departments share some cleaning supplies, such as squeegees and mops.

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<sup>14</sup> Employer Exhibit 10.

Deli department employees have some contact with bakery employees about once or twice a week in order to get bread to assemble sandwich and party trays, but there is not much detail concerning such interactions.

The deli department employees have some daily contact with various store employees who make purchases from them. All employees share the upstairs break area, outside areas and the deli seating area during breaks. They also use the same restroom, lockers, and the biometric time clock to clock-in and clock-out.

### ***Degree of Interchange***

The record does not reveal much interchange between the departments at Store No. 89.<sup>15</sup> The Broomfield meat contract prohibits non-bargaining unit employees, including the deli employees, from performing work in the meat department. However, there is some limited evidence that a deli employee in Store No. 89 temporarily worked along with an assistant store manager in the meat department on two occasions in an 8-month period where they weighed, wrapped and “tagged” meat for customers while a meat department employee was on a lunch break.

There was limited testimony that deli employees have had temporary work assignments in the retail departments. In late spring 2017, a deli employee worked in the front-end department at the checkout stands. A deli clerk testified that in April 2017 three deli employees worked the front-end checking customers. It is unclear as to the duration of these temporary work assignments. The same witness testified to an instance when a deli employee worked an overnight shift as a stocker. In one workweek in August 2017, three deli employees worked in the front-end department as retail clerks in the aggregate of seven shifts.<sup>16</sup>

The record reflects that retail employees have also worked temporary assignments in the deli. In this regard, a deli clerk testified that three months prior to the hearing, a front-end head clerk worked in the deli department operating the slicer because department was short on staff one day. The witness further testified that the front-end head clerk had previously worked in a deli department at a store other than Store No. 89. (The record does not reflect how long the front-end head clerk worked in the department.) The deli manager similarly testified that about a month prior to the opening of the hearing, a front-end service manager helped the deli department sort the department’s nightly load in the absence of a deli employee who had called in sick.

The record lacks any evidence of interchange between the bakery and deli employees.

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<sup>15</sup> As to interchange between stores, meat department employees at Store No. 89 (or from Store Nos. 86 and 118 for that matter) have not temporarily worked in the deli at Store No. 89.

<sup>16</sup> The record does not reflect that deli employees at Store No. 89 have worked any temporary assignments at Store Nos. 86 or 118.

As to permanent transfers and promotions, the Employer manages seniority systems for the purposes of facilitating employee interchange. These seniority systems are similarly organized by bargaining units or geographic areas. The Employer uses these seniority systems for scheduling and staffing purposes within a bargaining unit or geographic area.

With regard to transfers, the Employer's labor relations department operates promotional pools to staff vacancies that arise in its stores. The promotional pools are organized by geographic areas; consequently, the pools facilitate interchange between stores in the same geographic areas. The promotional pools facilitate two kinds of promotions: (1) a promotion to a permanent, vacant position that employees previously signed-up for; and (2) a promotion to a full-time position. These promotional opportunities arise within the employee's home store or in another store within the home store's geographic area. Once a vacancy arises, the labor relations department coordinates with the store manager and district human resources manager to fill the vacancy. Typically, the promotional opportunity is awarded based on seniority. The record reflects this promotional pool process is the same for the Employer's contractual unit.

Additionally, each store maintains an additional-hours list to ensure proper staffing levels. Employees may pick up extra hours by signing up on the additional-hours list at their home store or another store within the geographic area. This process is used in both union and nonunion stores and it is managed by a human resources manager.

Although the Broomfield meat contract allows for interchange between meat unit employees within its three stores (Store Nos. 86, 89, and 118), the record does not reflect that such interchange has in fact occurred. For instance, there is no evidence that any meat unit employee at Store No. 89 has had a permanent transfer or a temporary work assignment at the other unit stores or vice-versa. Conversely, there is limited record evidence that an assistant meat manager at Store No. 89 transferred from an unrepresented meat department in Store No. 135 in Lafayette. There is also limited testimony that this same employee transferred for a brief period from the Store No. 89 meat unit to the meat department in Store No. 13 in Louisville, Colorado, where the meat and deli employees are part of the Boulder multi-store meat unit.

### *Common Supervision*

As noted above, the Employer staffs a store manager and at least two assistant store managers at each of its stores, including Store No. 89. The store managers manage the day-to-day operations of the store, including staffing, scheduling, disciplinary actions, terminations, and grievance processing. The record reflects that there is a department head and assistant department head for the meat, seafood, deli, front-end, grocery, produce, general merchandise, and bakery departments.<sup>17</sup> The department heads report directly to the store manager. At store No. 89, the meat department manager is included in the contractual unit.

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<sup>17</sup> As noted above, the parties stipulated that the store manager and assistant store managers are statutory supervisors under the Act. The parties further stipulated that the front-end manager (head clerk) is not a statutory supervisor position. As for the remaining department head or assistant department head positions, neither party is asserting that these employees are statutory supervisors.

Store managers handle disciplinary matters at the store level in coordination with the district human resources manager or the Employer's labor relations department. In this regard, the labor relations department advises stores on issues of discipline and discharges for both represented and unrepresented employees. With respect to terminations, the Employer's operating procedure is that the termination of any employee with five years or more of employment, whether represented or not, has to be approved by the director of labor relations and vice president of operations.

Store managers also handle and process grievances at the store level in coordination with the district human resources manager and the Employer's labor relations department. The record shows that the Employer provides a dispute-resolution mechanism for both its represented and unrepresented workforces. The contractual meat unit has access to the contractual three-step grievance process, which provides for final and binding arbitration; whereas the unrepresented employee have access to a non-binding dispute-resolution mechanism set forth in the Employer's Conditions of Employment handbook. Under these processes, the unit employee or the non-unit employee may invoke the contractual grievance process or dispute-resolution mechanism, respectively, with their immediate supervisor or store manager. Whereas a union representative must appeal the grievance to the next grievance step, an unrepresented employee may do so on his or her own directly with the district human resources manager, then the labor relations department for review, and ultimately, before a review board made up of two employee representatives, two management representatives, and the labor relations manager.

The Employer's labor relations department maintains separate seniority systems for its represented and unrepresented workforces. The seniority system for the contractual meat unit is limited to the multi-store bargaining unit (Store Nos. 86, 89, and 118); whereas the seniority systems for the unrepresented workforce are organized by geographic area. Accordingly, Store No. 89's unrepresented workforce is grouped in the seniority system with the Employer's stores in Louisville (Store No. 13), Lafayette (Store No. 135), and Erie (Store No. 129). Seniority for both the contractual unit and the unrepresented workforce at Store No. 89 is determined by the length of employment with the Employer and not separately by job classification.

The Employer's labor relations department manages the seniority systems for the purposes of layoff and recall. The meat unit's and unrepresented workforce's seniority systems operate similarly. In this regard, meat unit employees' seniority rights may be only exercised within a particular classification in the multi-store unit; whereas unrepresented employees' seniority rights may be only exercised within the specific work group (i.e. retail/meat, retail security, retail administrative) and geographic area (i.e. Store Nos. 89, 13, 135 and 129).

### ***Terms and Conditions of Employment***

The Broomfield meat contract sets forth the wages and other fringe benefits. The meat unit wage rates range from \$10-\$21.78 per hour, with the manager receiving \$21.78, including wage progressions for each job classification in the unit. The contract also provides meat unit employees with overtime pay; Sunday premium pay; temporary assignment pay for work

performed at a higher rate; night premium pay; holiday pay; personal holidays; reporting pay; paid vacation; paid sick leave, bereavement leave, in addition to other pay as set forth in the meat contract. The meat contract also provides employees with seniority rights for the purposes of layoffs and re-hires. The meat contract provides meat unit employees with a health benefit plan and a pension.

The Employer's unrepresented deli and retail employees have similar wages and fringe benefits as the existing meat unit. The deli department's wages range anywhere from \$10.50-\$20.73 per hour, including wage progressions for each job classification in the department. The other retail departments share similar wage ranges, including wage progressions for each job classifications in their respective departments as follows: bakery, \$10.50-\$20.41; front-end, \$9.50-\$20.41; grocery employees, \$10-\$20.41; produce, \$10.50-\$20.41; and general merchandise, \$10-\$20.41. The deli and retail employees are also paid: overtime pay; Sunday premium pay holiday pay; night premium pay; reporting pay; temporary assignment pay for work performed at a higher pay rate (if applicable); travel pay; personal holidays; paid-sick leave; paid funeral leave in addition to other pay as detailed in the Employer's Conditions of Employment handbook for unrepresented employees. Finally, deli and other retail employees are offered and share the same company-provided health and retirement benefits.

The meat employees operate under a unique shift scheduling system. Meat unit employees' schedules follow a bargained-for rotation schedule. Whereas, the deli and other retail employees' schedules are determined by the select-a-shift process in accordance with the Employer's seniority system.<sup>18</sup>

## ANALYSIS

I find that the facts, when considered as a whole, support a finding that the deli department employees in Store No. 89 share the requisite community of interest with the meat department in the existing meat unit in Store Nos. 86, 89, and 118, and a sufficiently distinct function and community of interest from the remaining employees in Store No. 89 to establish a separate voting group under *Warner-Lambert*, supra. I further find, pursuant to the stipulation of the parties and consistent with the record, that the deli department employees are a distinct, identifiable segment as required by *Warner-Lambert* so as to constitute an appropriate voting group.

The Employer contends that the analysis should be based on *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare & Rehabilitation of Mobile*, 357 NLRB 934 (2011). I do not find that the *PCC Structural* framework overruled or dealt with the *Warner-Lambert* standard for self-determination cases. In that regard, the Board found that the *Specialty Healthcare* community of interest standard, where an employer asserted that the only appropriate unit must include additional employees, did not apply to self-determination petitions.

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<sup>18</sup> The record reflects that the deli employees began using the select-a-shift process beginning in about October 2017.

See *Republic Services of Southern Nevada*, 365 NLRB No. 145, fn. 1 (2017). Accordingly, there is no basis to conclude that the *PCC Structural*s case is the standard to be applied in this matter.

The parties contend that their collective-bargaining history in all other meat units in the state of Colorado is relevant here. The Petitioner argues that because it represents combined deli and meat units in many other bargaining units, this favors a finding that the petitioned-for unit and the existing contractual unit are an appropriate unit. On the other hand, the Employer cites to the parties' collective-bargaining history in the units in Greeley and prior Decision and Direction of Elections to argue that the appropriate unit should be one composed of all retail employees and deli employees in its Broomfield-Lafayette-Louisville-Erie geographic area.<sup>19</sup> Contrary to the parties' positions, in the context of determining the appropriateness of a bargaining unit, the concept of bargaining history refers to past bargaining relationship between the employer and the employees in the immediate petition. *Big Y Foods, Inc.*, 238 NLRB 855 (1978).<sup>20</sup>

The Broomfield meat department employees involved herein have been represented by the Petitioner in a multi-store unit and the petitioned-for deli employees have not. The proposed voting group includes the deli employees from Store No. 89 and not the deli employees from Store No. 118, notwithstanding that the three-store meat unit also includes that store. No party in this matter asserts that the voting group should include employees from Store No. 118, nor am I aware of a basis to compel such a grouping in the context of an *Armour-Globe* self-determination election absent the requisite community of interest between Store Nos. 89 and 118. The bargaining history that is relevant in the Broomfield stores establishes that the parties agreed that the deli department employees in Store 86 should be with the retail employees, but did not accrete the deli employees from Store Nos. 89 and 118 into that unit over time. Thus, the fact that only one of two unrepresented deli departments in the Broomfield stores may be permitted to vote as to whether to join the meat unit does not run counter to the Employer's practice concerning the deli departments in the Broomfield stores.

As to the community of interest factors, employees in Store No. 89 have shared overall supervision by the store manager and assistant managers, have similar wage scales, the same applicable policies and seniority system, access to the same break areas, and shared general training. Thus, there are some factors that suggest a shared community of interest between the retail and deli employees, including that the meat department employees wear vests or smocks, while the deli and most other retail departments wear blue shirts and green aprons. Like the front-end employees, the deli employees operate cash registers, although there are many more functions within the deli department aside from checking out customers. The record does not

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<sup>19</sup> While there is an administrative geographic area that includes the Broomfield, Lafayette, Louisville, and Erie stores, there is no bargaining history that is common to all of those stores. The record reveals that, in addition to Store No. 89's meat department, one other store in that geographic grouping already has employees who are part of an existing bargaining unit. In that regard, the meat and deli departments in the Louisville Store No. 13 are represented by Petitioner as part of the Boulder multi-store unit.

<sup>20</sup> Assuming *arguendo* that the overall bargaining history between these parties concerning deli and meat units was relevant to the determination, I would find that (1) the parties include deli and meat departments in the same units a wide majority of the time, and (2) the parties have far more multi-store units than stand-alone units.

show substantial and regular interchange between the deli and other departments. In that regard, the record showed that employees who work in the deli need special training to operate the equipment that is potentially dangerous (slicers and fryers), which naturally limits opportunities for other employees to work in that department. Similarly, the record established that the contract covering the meat department employees does not permit employees outside of the unit from performing such work. Thus, there was more, albeit limited, temporary interchange between the deli and retail employees than that shown between the meat and deli. Further, there was little testimony or evidence concerning permanent transfers and promotions into or out of the deli. I find that while there is some community of interest between the deli and retail employees, overall, the community of interest factors establish the requisite community of interest between the deli and meat employees to conduct a self-determination election.

The job function in the deli and meat departments of slicing or cutting meat to a customer's specification (whether cooked or raw), weighing it, wrapping it and pricing the product is similar. Cf. *Ideal Supermarkets Div.*, 171 NLRB 1 (1968)(lack of community of interest between meat and deli departments based in part on fact that deli employees did not slice meats). To accomplish the handling of food products in their respective departments, the deli and meat department employees must have additional food handling training that other retail associates do not. Further, the equipment and processes cannot be operated by employees outside of their departments without specific training and shadowing.

As to skills, the position description suggests that the meat managers and assistant managers are required to have some vocational meat handling experience, while the clerk does not have to meet such requirements. It is unclear what level of experience is required for the "Head Clerk – Assistants" as they are listed by the Employer as part of its Statement of Position. In that regard, this record did not establish that the clerks or head clerk assistants perform highly skilled meat cutting and butchering. See *Kroger Co.*, 201 NLRB 920 (1973)( requisite community of interest where only portion of meat department employees were highly skilled and clerks and helpers mainly weighed, priced, packaged, and stocked). Furthermore, there is testimony that deli employees perform complex tasks that require skill such as slicing meat, frying chicken and preparing food.

There was much testimony about the equipment used and/or located in the various departments. To be sure, there are unique pieces of equipment in each department; however, there are similarities between the deli and meat departments. The record does show that the bakery and deli both regularly use ovens, and the meat department only uses a small steam oven for samples. There is a bread slicing machine in the bakery and the deli operates meat slicers. There is more skill involved in slicing meats to a customer's specifications, however, than to place a loaf of bread into a bread slicer. In that regard, the deli and meat department employees both use specific safety gloves for cutting and slicing, which other employees do not. The record showed that although there is a grinder in the meat department, there was testimony that it is no longer used. Further, it is unclear under what circumstances and how often the meat department's other equipment, such as the band and power saws, are used. The bakery no longer operates its fryer, while the deli employees cook fried chicken in one. The meat department uses filet knives to trim meats, and the deli cuts and slices cheese and uses knives for the preparation

of (albeit cooked) food, such as salmon. Such knife work in the preparation of food items is not as similar as using a small knife to trim produce or flowers in the produce and floral departments, respectively. Nor is the use of box cutters akin to using knives and slicers on food.

As to contact between departments, the meat and deli departments are adjacent. As a result, they have frequent occasion to see each other while working. Further, there is regular work-related contact between the departments with the unloading of product being coordinated between the two departments on a daily basis. Such regular contact when performing work also shows functional integration of that process. In contrast, while the deli department requires bread from the bakery for party and sandwich trays, that is less frequent and the nature of the contact was unclear. The record evidence does not show that the bakery and deli employees regularly work side-by-side to prepare such trays. Other contact by the deli department with other departments, such as when employees are purchasing items from the deli as customers, does not suggest functional integration and is incidental. Further, the hours for both the deli and meat departments are the same (until 10 p.m.), while the store is open until midnight.

The record shows that the deli and meat departments have shared supervision. All employees have departmental managers, but the authority resides with the store managers and assistant managers. Thus, all departments discussed in the record have shared supervision.

The evidence regarding wages, hours and other benefits establishes that the meat bargaining unit, deli, and retail employees share similar wages, fringe benefits, and seniority systems for the purposes of layoffs, recall, and promotional opportunities. While there are different programs between the represented and unrepresented employees involved in this matter, including rotational scheduling (meat) and the select-a-shift program (deli and retail), such differences are not a determinative factor in the context of an *Armour-Globe* election. See *Public Service Company of Colorado*, 365 NLRB No. 104, fn. 4 (2017)(differences in employment terms do not require exclusion where unit employees' terms were the result of collective bargaining).

Interchange is not a significant factor in this determination as there is limited interchange between the deli with the meat or retail departments. There was limited evidence that deli employees cover for retail employees more than *vice versa*, but the record did not show significant and regular interchange in either case. The collective bargaining agreement covering the meat department currently does not permit deli and other department employees from working in the meat department. Again, this limitation is the result of bargaining rather than a clear functional limitation.

In sum, the record establishes that the meat and deli employees have regular contact, are in close proximity, have the same hours, require additional food handling training than other employees, and perform some similar functions, which support a determination that there is a requisite community of interest to conduct a self-determination election in the petitioned-for voting group. The factor of interchange is neutral as there is limited evidence of interchange in the record between any departments. Bargaining history is not a factor where the parties have agreed to many different bargaining unit configurations involving the meat and deli units. While



there is common supervision, similar wages and fringe benefits for all employees, and the deli employees use a cash register like many (but not all) retail employees, these factors do not negate the additional factors in favor of a requisite community of interest between the meat and deli department employees.

### **CONCLUSION**

Since I have determined that the voting group sought by Petitioner is appropriate, I shall direct a self-determination election among the employees in the petitioned-for voting group. Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>21</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. A self-determination election is appropriate for the following voting group:

Included: All full-time and regular part-time delicatessen department employees employed by the Employer at Store No. 89, located in Broomfield, Colorado; excluding all other employees, store manager, assistant store managers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not

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<sup>21</sup> The Employer is a Kansas corporation with multiple facilities and places of business in Colorado where it is engaged in the business of operating retail grocery stores. During the past twelve months, a representative period, the Employer, in conducting its retail grocery operations, derived gross revenues in excess of \$500,000 and purchased and received at its Colorado facilities goods valued in excess of \$5,000 directly from points outside of the State of Colorado.

they wish to be represented for purposes of collective bargaining by **United Food and Commercial Workers International Union, Local 7.**

If a majority of valid votes is cast for the Petitioner, the voting group will be taken to have indicated the employees' desire to be included in the existing unit of Broomfield meat employees in Store Nos. 86, 89, and 118, including meat cutters, apprentices, wrappers, butcher block sales persons, who are currently represented by Petitioner. If a majority of valid ballots is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

**A. Election Details**

The election will be held at a date as soon as practicable after the issuance of this decision and times to be determined by the undersigned.

**B. Voting Eligibility**

Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the issuance of this decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 3, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Notices of Election will be provided shortly after the issuance of this Decision. Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 1, 2018

*/s/ Paula Sawyer*

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